Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 80–282)

Bonds

Approval and discontinuance of bonds on Customs form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations

Bonds on Customs form 7587 for the control of instruments of International traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discountinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: November 20, 1980.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Airline Marketing Services, Inc., 15481 West 110th St., Lenexa, KS; Old Republic Ins. Co.	Sept. 19, 1980	Sept. 22, 1980	Los Angeles, CA $50,000
Allied Engineering Co., 230 Park Ave., NY, NY; Old Republic Ins. Co.	Aug. 29, 1980	Sept. 2, 1980	New York, NY $10,000
B. R. Anderson & Co., 1000 Second Ave., Rm 800, Seattle, WA; Investors Ins. Co. of America D 9/23/80	Sept. 24, 1979	Oct. 4, 1979	Seattle, WA $10,000
J. C. Brock Corp., 95 Kentucky St., Buffalo, NY; Employers Insurance of Wausau (PB 8/15/79) D 11/4/80 [1]	Oct. 6, 1980	Nov. 4, 1980	Buffalo, NY $10,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
CATU Containers, 300 E. 42nd St., New York, NY; Old Republic Ins. Co.	Oct. 22, 1980	Oct. 28, 1980	San Francisco, CA $20,000
Compagnie Generale Trans Baltique (Ro Lo Pacific Lines), 100 California St., San Francisco, CA; The Continental Ins. Co.	Oct. 10, 1980	Oct. 14, 1980	San Francisco, CA $10,000
Container Pool Inc., 1 World Trade Center, New York, NY; Peerless Ins. Co. D 9/22/80	Nov. 19, 1974	Nov. 19, 1974	New York, NY $10,000
Furness Interocean Corp., 465 California St., Rm. 1001, San Francisco, CA; Old Republic Ins. Co. D 2/2/79	Dec. 1, 1978	Dec. 7, 1978	San Francisco, CA $10,000
Furness Interocean Corp., 444 W. Ocean Blvd., Long Beach, CA; St. Paul Fire & Marine Ins. Co.	Jan. 29, 1980	Feb. 2, 1979	Los Angeles, CA $50,000
G.P. Industries Inc. and its subs: Gas Products Corp., Eastern Gas Products Corp., Carbonic Corp., Western Gas Products Corp., Northern Gas Products Corp., Central Medical Products Corp., Western Medical Products Corp., Island Gas, Inc.; 306 Ponce de Leon Ave., Hato Rey, PR; Antilles Ins. Co. (PB 6/24/77) D 8/14/80 [2]	Oct. 16, 1980	Oct. 21, 1980	San Juan, PR $10,000
Hartog Foods International Inc., 515 Madison Ave., New York, NY; Old Republic Ins. Co. D 9/27/80	Sept. 28, 1979	Oct. 3, 1979	Seattle, WA $10,000
Matson Navigation Co., 333 Market St., San Francisco, CA; St. Paul Fire & Marine Ins. Co.	Aug. 15, 1974	Aug. 15, 1974	San Francisco, CA $10,000
Northwest Net and Twine, Inc., 1064 E. Pole Rd., Everson, WA; Washington International Ins. Co. D 10/18/80	Oct. 19, 1976	Oct. 20, 1976	Seattle, WA $10,000
Overseas Shipping Co., 1 California St., San Francisco, CA; St. Paul Fire & Marine Ins. Co.	Aug. 4, 1980	Aug. 20, 1980	San Francisco, CA $50,000
Pérez & Cia. de Puerto Rico, P.O. Box 10084, Santurce, PR; Puerto Rican American Ins. Co.	Sept. 26, 1980	Sept. 26, 1980	San Juan, PR $25,000
Puerto Rican Cement Co., Inc., Chase Manhattan Bank Bldg., Hato Rey, PR; New Hampshire Ins. Co. (PB 10/31/79) D 10/25/80 [3]	Aug. 25, 1980	Oct. 25, 1980	San Juan, PR $10,000
Ontario Paper Co., Ltd. and its subs: ONS Paper Co., Ltd., 80 King St., P.O. Box 3026, St. Catharines, Ontario; Insurance Co. of North America (PB 10/1/77) D 10/1/80 [4]	Sept. 18, 1980	Oct. 1, 1980	Buffalo, NY $10,000
Rothery Storage and Van Co., 1525 Chase Ave., Elk Grove Village, IL.; Mid-Century Ins. Co.	July 16, 1980	Aug. 11, 1980	Chicago, IL $10,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Santa Fe Engineering & Construction Co., Inc., 505 S. Main St., Santa Ana, CA; St. Paul Fire & Marine Ins. Co.	Oct. 27, 1980	Oct. 29, 1980	New Orleans, LA $10,000
Star Nederland B.V., 3529 Whitebrook Plaza, Memphis, TN; St. Paul Fire & Marine Ins. Co.	Sept. 25, 1980	Sept. 25, 1980	New Orleans, LA $10,000

[1] Surety is Liberty Mutual Ins. Co.
[2] Principal is Gas Products Corp.; Surety is Puerto Rican American Ins. Co.
[3] Principal is Puerto Rican Cement Co.
[4] Principal is the Ontario Paper Co., Ltd.; Surety is St. Paul Fire & Marine Ins. Co.

BON-3-10

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

(T.D. 80-283)

Foreign Currencies—Daily Rates For Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People' Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical), and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruzeiro:	
November 10–12, 1980	$0.0167
November 13–14, 1980	.0163
People's Republic of China yuan:	
November 10, 1980	$0.652869
November 11, 1980	Holiday
November 12–14, 1980	.661463
Hong Kong dollar:	
November 10, 1980	$0.196271
November 11, 1980	Holiday
November 12, 1980	.196463

November 13, 1980	.195867
November 14, 1980	.195810
Iran rial:	
November 10–14, 1980	Not available
Philippines peso:	
November 10–14, 1980	$0.1324
Singapore dollar:	
November 10, 1980	$0.479962
November 11, 1980	Holiday
November 12, 1980	.477327
November 13, 1980	.478469
November 14, 1980	.478011
Thailand baht (tical):	
November 10–14, 1980	$0.0485
Venezuela bolivar:	
November 10–13, 1980	$0.2328
November 14, 1980	.2329

(LIQ-3-01 O:C:E)

Dated: November 14, 1980.

NANCY I. BROWN,
Chief,
Customs Information Exchange.

(T.D. 80–284)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 80–249 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Austria schilling:	
November 10–11, 1980	$0.072860
November 12–13, 1980	Quarterly
November 14, 1980	.074184

Belgium franc:	
November 10–11, 1980	$0.032658
November 12, 1980	.032765
November 12, 1980	Quarterly
November 14, 1980	.032712
Germany deutsche mark:	
November 14, 1980	$0.524934
Ireland pound:	
November 10–11, 1980	$1.9640
November 12, 1980	1.9630
November 13, 1980	1.9680
November 14, 1980	1.9580
Netherlands guilder:	
November 12, 1980	$0.483793
Sri Lanka rupee:	
November 10–14, 1980	$0.58140

(LIQ–3–01 O:C:E)

Dated: November 14, 1980.

NANCY I. BROWN,
Chief,
Customs Information Exchange.

U.S. Customs Service

General Notice

(521854)

Three-wheel all-terrain vehicles; change of practice considered; 19 CFR, part 177

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed change of practice.

SUMMARY: This document gives notice that the Customs Service is reviewing a uniform and established practice concerning the classification of three-wheel all-terrain vehicles. The Customs Service currently classifies the subject vehicles under the provision for other motor vehicles (except motorcycles) for the transport of persons or articles in item 692.10, Tariff Schedules of the United States (TSUS). The proposed change of practice would result in the reclassification of these vehicles under the provision for motorcycles in item 692.50, TSUS.

DATES: Comments (preferably in triplicate) must be received on or before: (30 days from the date of publication of this notice in the Federal Register).

ADDRESS: Comments should be addressed to the Commissioner of Customs, attention: Regulations and Research Division, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Leonard J. Emmert, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–8181.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In a Headquarters ruling dated July 15, 1970, file No. 005618, a three-wheeled all-terrain vehicle, which resembled a motorcycle with two rear wheels, was held to be classifiable under the provision for other motor vehicles (except motorcycles) for the transport of persons or articles in item 692.10, Tariff Schedules of the United States

(TSUS). That ruling was circularized to all ports, and all importations of vehicles of the kind in question have been classified in conformity therewith, resulting in a uniform and established practice within the meaning of 19 U.S.C. 1315(d). The subject vehicles utilize a handlebar for steering and have a seat that is straddled by the driver who is not enclosed in the vehicle. Generally, balloon-type tires permit the vehicles to travel on all types of terrain. In 1978 a ruling was issued, however, indicating that these are motorcycles.

The Customs Service notes that the Brussels Nomenclature, Heading 87.09, section XVII (1975), indicates that three-wheeled vehicles of the kind in question are classifiable as motorcycles. Further, it is noted that regulation VESC–11 of the Vehicle Equipment Safety Commission defines a motorcycle as a two-wheel or three-wheel vehicle with motive power, a singular front steering road wheel mounted in a fork assembly which passes through a frame steering bearing, and to which is attached a handlebar assembly, and which has no enclosure for the driver with the exception of a windshield, if so, equipped.

PROPOSED CHANGE OF PRACTICE

An eo nomine provision for an article, such as the provision for motorcycles, without limitations or shown contrary legislative intent, judicial decision, or administrative practice to the contrary, and without proof of commercial designation, will include all forms of such article. *Nootka Packing Co.* v. *United States*, 22 C.C.P.A. 464, T.D. 47464 (1935). In view of this principle, and in light of the definitions enunciated above, the Customs Service proposes to change the current uniform and established practice of classifying three-wheeled all-terrain vehicles of the kind in question under item 692.10, TSUS. The Customs Service proposes that the subject vehicles be reclassified as motorcycles under item 692.50, TSUS.

AUTHORITY

Inasmuch as the proposed change of practice will affect the assessed duties on the subject vehicles, the Customs Service is giving this notice and opportunity to comment in accordance with section 315(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and section 177.10(c)(1) of the Customs Regulations (19 CFR 177.10 (c)(1)).

Consideration will be given to any written comments submitted in writing to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Head-

quarters, room 2426, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this notice was Harold I. Loring, Regulations and Research Division, U.S. Customs Service. However, personnel from other offices of the U.S. Customs Service participated in developing this notice, both on matters of style and substance.

Approved: November 17, 1980.

WILLIAM T. ARCHEY,
for Commissioner of Customs.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register, Nov. 28, 1980(45 F.R. 79221)]

U.S. Customs Service

Proposed Rulemaking

(19 CFR Part 12)

Special Classes of Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to inform the importing public about the Toxic Substances Control Act (TSCA) and to amend the Customs Regulations to regulate the entry of any chemical substance, imported in bulk or as part of a mixture, or article containing a chemical substance or mixture into the Customs territory of the United States. The proposed amendments, which have been developed after consultation with the Environmental Protection Agency (EPA), are designed to implement TSCA by requiring the importer of a chemical shipment to certify at the port of entry that the shipment is in compliance with TSCA and all rules and orders under TSCA.

DATE: Comments must be received on or before (90 days after publication in the Federal Register).

ADDRESS: Comments may be addressed to the Commissioner of Customs, attention, Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue NW., room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harrison C. Feese, Entry Examination and Liquidation Branch, Duty Assessment Division, Office of Trade Operations, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202–566–8651; or Industry Assistance Office (TS 799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M Street SW., Washington D.C. 20460, 800–424–9065 (toll free); calls within the District of Columbia, 554–1404.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Toxic Substances Control Act (TSCA), Public Law 94–469, approved October 11, 1976, was enacted by the Congress to regulate commerce and protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances and for other purposes. Section 13, TSCA, directs the Secretary of the Treasury, after consultation with the Administrator, Environmental Protection Agency (EPA), to refuse entry into the Customs territory of the United States (the Customs territory) of any chemical substance, mixture, or article containing a chemical substance or mixture that:

1. Fails to comply with any rule in effect under TSCA, or
2. Is offered for entry in violation of section 5 or 6, TSCA, a rule or order issued under section 5 or 6, or an order issued in a civil action brought under section 5 or 7, TSCA.

Section 13 further provides that if a chemical substance, mixture or article is refused entry, the Secretary shall notify the consignee of the entry refusal, not release the shipment to the consignee, except under bond, and cause its disposal or storage under such rules as the Secretary may prescribe if the shipment has not been exported by the consignee within 90 days from the date of receipt of the notice of entry refusal.

To implement the provisions of section 13, Customs and EPA have developed proposed amendments to parts 12 and 127, Customs Regulations (19 CFR parts 12, 127), to regulate the entry of any chemical substance, imported in bulk or as part of a mixture, or an article containing a chemical substance or mixture into the Customs territory.

REPORTING REQUIREMENTS

Importer certification

Proposed section 12.121, Customs Regulations, would require each importer of a chemical substance, mixture, or article containing a chemical substance or mixture subject to a specific regulation under TSCA, to certify to the District Director of Customs at the port of entry that the shipment is in full compliance with TSCA and all rules and orders under TSCA. The certification would appear as a signed statement: (1) On the entry summary document, or, for those entries which do not have entry summaries, on the appropriate entry document; or (2) in the event of release under a special permit for an immediate delivery, as provided for in section 142.21, Customs Regulations, or entry, as provided for in section 142.3, Customs Regulations either on the importer's invoice or an attachment to the invoice, or (3) on the Special Chemical Import Report Form, if the importer is required to submit this form, as explained below.

By signing the certification statement, the importer certifies the following:

1. The shipment is in compliance with the premanufacture notification requirements of section 5, TSCA, which provide that, unless exempted by the Administrator, EPA, a person must notify the Administrator at least 90 days before manufacture, importing, or processing, if the person intends to:

(a) manufacture or import for a commerical purpose a new chemical substance (one not included on the inventory compiled pursuant to section 8(b), TSCA), or

(b) manufacture, import, or process any chemical substance for a use which the Administrator has determined, by rule, is a significant new use. (No significant new use rules have been promulgated to date.)

EPA's initial Toxic Substances Control Act Chemical Substances Inventory was issued on June 1, 1979, and the premanufacture notification requirements for chemical substances imported in bulk became effective on July 1, 1979. For chemical substances as part of mixtures, premanufacture notification requirements will begin 30 days after publication of the EPA's Revised Inventory. Until 30 days after publication of the Revised Inventory, importers can report chemicals which are not included on EPA's Initial Inventory and that they import as part of a mixture or article for the first time after December 31, 1979. These chemicals will be included on EPA's Revised Inventory.

2. The shipment does not violate any rule in effect under TSCA or any rule or order issued under sections 5, 6, or 7, TSCA. These rules or orders may pertain to limitations under section 5 (e) or (f) on importing new chemical substances or chemical substances to be imported for a significant new use, chemical control regulations under section 6, or judicial orders under section 7.

3. All required information submittals are complete and accurate.

Special chemical import report form

To enforce TSCA, in certain cases EPA may require information beyond the importer's certification. Proposed section 12.121(b) provides that if required by the Administrator by rule under TSCA for a chemical substance, the importer shall submit an EPA Special Chemical Import Report Form to the District Director at the port of entry. This form would certify that the shipment is in compliance with TSCA and all rules developed under TSCA, and would also require certain information such as amount imported, intended use, distribution, disposal, exposure, or other information, as required by a rule under TSCA.

To date, EPA has not issued any rules which would require the submission of a Special Chemical Import Report Form. EPA plans to develop the form as the need to control imports of specific chemicals arises. When developed, the form will be subject to clearance and

333-194 O - 80 - 2

approval of the Office of Management and Budget and EPA will provide notice and an opportunity for public comment.

Alternatives to importer certification considered

EPA and Customs considered other alternatives to requiring importer certification of compliance with TSCA, recognizing that some importers may not have complete information about their chemical shipments. In some cases, the foreign exporter is not the chemical manufacturer. In other cases, the foreign manufacturer may be reluctant to divulge specific information regarding the shipment.

The most direct way to secure this information would be to require the exporter to submit the necessary data. However, neither TSCA nor any other law authorizes EPA or Customs to place such requirements directly upon the foreign exporter. The responsibility of reporting must be on the importer.

EPA also considered requiring the importer to submit detailed reports, including the chemical identity and trade names of the merchandise. These reports could provide a more thorough information base on which to make decisions regarding chemical importations. EPA is not proposing this option, however, for several reasons. The initial problem that importers would face in securing general information about chemical shipments would most likely escalate if importers asked for specific chemical information such as processing specifications or the proportions of a chemical substance in a mixture.

Even if importers could provide specific chemical information, much of it would not be useful because most Customs officials are not trained to interpret chemical reports and would not have time to check long trade names against lists cross-referenced with regulated chemicals. It also would be nearly impossible for EPA to develop a useful trade name list because of the number of countries producing chemicals, the number of individual foreign manufacturers and processors, and the constant need to update the list.

EPA and Customs view the proposed regulations as the most reasonable and least burdensome approach to monitoring imported chemical shipments. An economic impact report, "Economic Impact Assessment of the Section 13 Importer Regulations of the Toxic Substances Control Act" (see below), analyzes the private sector costs of various means of providing importer certification. The proposed regulations appear to be the most feasible approach. Also, by asking the foreign exporter and/or manufacturer about compliance with TSCA, the importer would be educating the foreign chemical market about U.S. requirements for chemical importation. This education process should facilitate overall achievement of TSCA objectives. Eventually, the proposed reporting system could be

amended to reflect change or development in international import agreements.

DETENTION OF SHIPMENTS

Under TSCA, EPA is authorized to control chemical substances found to pose an unreasonable risk to human health or the environment. Sections 5 and 6, TSCA, permit the Administrator to issue a rule or order to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance. Under section 7, TSCA, the Administrator may commence a civil action in a U.S. district court for seizure of an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture. To minimize any risk to health or the environment, proposed section 12.122(a) provides that the District Director at the port of arrival shall detain, at the importer's risk and expense, shipments of chemical substances, mixtures, or articles: (1) Which have been banned from the customs territory by a rule or order issued under sections 5 or 6, TSCA; or (2) which have been ordered seized because of imminent hazard pursuant to section 7, TSCA; or (3) as otherwise directed by the Administrator.

Proposed section 12.122(b) provides for detention of a chemical shipment at the port of entry, at the importer's risk and expense, whenever: (1) The importer fails to certify compliance with TSCA; or (2) the Administrator, after giving notice with reasons to the importer, notifies the District Director to detain the shipment; or (3) the District Director has reasonable grounds to believe that the shipment is not in compliance with TSCA or any regulations and orders issued under TSCA. In the event of detention, the District Director will promptly notify the importer and the Administrator and explain the reasons for detention.

PROCEDURE AFTER DETENTION

Submission of written documentation

Proposed section 12.123 provides that the importer may submit written documentation to the Administrator, with a copy to the District Director at the port of entry, within 20 days from the date of the notice of detention to show cause why the shipment should not be refused entry. The importer may also obtain custody of the detained shipment by furnishing a Customs bond for the return of the shipment to Customs custody.

Determination by the administrator

The Administrator, after consideration of the available evidence and within 30 days from the notice of detention, will determine whether the detained shipment complies with TSCA. If the Ad-

ministrator finds that the shipment is in compliance, the District Director shall release the shipment to the importer. If the Administrator finds that the shipment is not in compliance, the District Director shall either refuse to deliver the shipment to the importer and explain the reasons for this refusal, or, if the shipment has been released on bond, demand the redelivery of the shipment under the terms of the bond and explain the reasons for this demand.

Time limitations

Proposed section 12.124 provides that the importer of a detained shipment shall bring the shipment into compliance with TSCA or remove it from the Customs territory within 90 days after notice of detention or 30 days after demand for redelivery, whichever comes first. The District Director, upon notification by the Administrator, may grant a 30-day extension if the importer is unable to bring the merchandise into compliance with TSCA or remove it from the Customs territory within the required time period due to delays caused by EPA or Customs.

NOTICE OF INTENT TO ABANDON OR EXPORT A DETAINED SHIPMENT

If a shipment does not comply with TSCA, the importer may abandon or export it. Under proposed section 12.126, if the importer decides to abandon the shipment, written notice of intent to abandon must be presented to the District Director and the Administrator. By submission of this certification, the importer waives any right to export the shipment and the importer remains liable for any expenses incurred in the storage and/or, disposal of the merchandise. Under proposed section 12.125, if the importer decides to export the shipment, written notice of exportation must be presented to the District Director and the Administrator.

Storage or disposal of shipments

Under proposed section 12.127, a detained shipment shall be considered to be unclaimed and abandoned and shall be stored or disposed of by the Administrator if the importer has not brought the shipment into compliance within the required time period and any extension specified in proposed section 12.124, and (1) has not exported the shipment within the required time period and any extension specified in proposed section 12.124, or (2) has certified intent to abandon the shipment.

AUTHORITY

This amendment is proposed under the authority of section 13, 90 Stat. 2034 (15 U.S.C. 2612), R.S. 251, as amended (19 U.S.C. 66), and section 624, 46 Stat. 759 (19 U.S.C. 1624).

COMMENTS

Before adopting this proposal, consideration will be given by EPA and Customs to any written comments, preferably in quadruplicate, submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., room 2426, Washington, D.C. 20229. Comments will also be available for public inspection from 8 a.m. to 4 p.m. at the Environmental Protection Agency, Office of Pesticides and Toxic Substances, reading room, 447 East Tower, 401 M Street SW., Washington, D.C. 20460, as part of EPA docket No. OPTS 3000.

ECONOMIC IMPACT ANALYSIS STATEMENT

Estimated costs for industry compliance with this regulation are contained in a report entitled, "Economic Impact Assessment of the Section 13 Importer Regulations of the Toxic Substance Control Act," dated November 1979. This report indicates that total cost to industry will be approximately $2.3 million.

The economic impact study is available for review at the Environmental Protection Agency, Office of Pesticides and Toxic Substances, reading room, 447 East Tower, 401 M Street SW., Washington, D.C. 20460.

INAPPLICABILITY OF EXECUTIVE ORDER 12044

This document is not subject to the Treasury Department directive implementing Executive Order 12044, "Improving Government Regulations," because the regulation was in process before May 22 1978, the effective date of the directive.

EPA has determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under Executive Order 12044.

DRAFTING INFORMATION

The principal author of this document was Laurie Strassberg Amster, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs and EPA offices participated in its development.

PROPOSED AMENDMENTS

PART 12—SPECIAL CLASSES OF MERCHANDISE

It is proposed to amend part 12, Customs Regulations (19 CFR Part 12), by adding new sections 12.118 through 12.127 to read as follows:

CHEMICAL SUBSTANCES IN BULK AND AS PART OF MIXTURES AND ARTICLES

12.118 Toxic Substances Control Act.

The importation into the customs territory of the United States of a chemical substance in bulk or as part of a mixture or article is governed by the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 et seq.), and by regulations issued under the authority of section 13(b), TSCA (15 U.S.C. 2612(b)) by the Secretary of the Treasury in consultation with the Administrator, Environmental Protection Agency (EPA).

12.119 Scope.

Sections 12.120 through 12.127 apply to the importation into the customs territory of the United States of chemical substances in bulk and as part of mixtures under TSCA.

Sections 12.120 through 12.127 may also apply to articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.

12.120 Definitions.

Except as otherwise provided below, the terms used in sections 12.121 through 12.127 have the meanings set forth for those terms in TSCA.

(a) Article

(1) Article means a manufactured item which:

(i) Is formed to a specific shape or design during manufacture,

(ii) Has end use function(s) dependent in whole or in part upon its shape or design during end use, and

(iii) Has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in subsection 12.120 (a)(2) below; except that fluids and particles are not considered articles, regardless of shape or design.

(2) The allowable changes of composition, referred to in subsection 12.120(a)(1), are those which result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles such as adhesives, paints, miscellaneous cleaners or other household products, fuels and fuel additives, water softening and treatment agents, photographic films, batteries, matches, and safety flares in which the chemical substance manufactured upon end use of the article is not itself manufactured for distribution in commerce or for use as an intermediate.

(b) Chemical substance in bulk form means a chemical substance (other than as part of a mixture or article) in containers used for purposes of transportation or containment, provided that the chemical substance is intended to be removed from the container and has an end use or commercial purpose separate from the container.

12.121 Reporting Requirements.

(a) *All chemical substances in bulk or mixtures.*—The importer of a chemical substance, imported in bulk or as part of a mixture, shall certify to the District Director at the port of entry that the chemical shipment is in compliance with TSCA and all rules and orders under TSCA. The importer shall make this certification by signing the following statement:

> I certify that all chemical substances in this shipment comply with all rules under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any rule or order under TSCA.

This certification shall appear as a typed statement

(1) On the entry summary document, or, for those entries which do not have entry summaries, on the appropriate entry document, or

(2) In the event of release under a special permit for an immediate delivery, as provided for in section 142.21 of this chapter, or entry, as provided for in section 142.3 of this chapter, either on the importer's invoice or an attachment to the invoice, or

(3) On the Special Chemical Import Report Form, if the importer is required to submit this form as provided for in paragraph (b) of this section.

(b) *Certain regulated chemical substances.*—If specifically required by the Administrator by rule under TSCA, each importer of a chemical substance, imported in bulk or as part of a mixture, shall submit an EPA Special Chemical Import Report Form to the District Director at the port of entry.

(c) *Chemical substance or mixture as part of articles.*—Each importer of a chemical substance or mixture as part of an article shall meet the reporting requirements set forth in paragraph (a) and (b) of this section only if required by a rule or order under TSCA.

12.122 Detention of Certain Shipments.

(a) The District Director at the port of arrival shall detain, at the importer's risk and expense, shipments of chemical substances, mixtures, or articles:

(1) Which have been banned from the customs territory of the United States by a rule or order issued under sections 5 or 6 of TSCA (15 U.S.C. 2604 or 2605); or

(2) Which have been ordered seized because of imminent hazard as specified under section 7 of TSCA (15 U.S.C 2606); or

(3) As otherwise directed by the Administrator.

(b) The District Director at the port of entry shall detain shipments of chemical substances mixtures, or articles at the importer's risk and expense, in the following situations:

(1) Whenever the Administrator has reasonable grounds to believe that the shipment is not in compliance with TSCA, gives detention notice with reasons to the importer, and notifies the District Director to detain the shipment; or

(2) Whenever the District Director has reasonable grounds to believe that the shipment is not in compliance with TSCA; or

(3) Whenever the importer fails to certify compliance with TSCA as required by section 12.121.

Upon detention of a shipment, the District Director shall give prompt notice to the Administrator and the importer. The notice shall include the reasons for detention.

12.123 Procedure After Detention.

(a) *Submission of written documentation.*—If a shipment is detained by a District Director under section 12.122, the importer may submit written documentation to the Administrator with a copy to the District Director within 20 days from the date of notice of detention to show cause why the shipment should not be refused entry.

(b) *Release on bond.*—The District Director may release to the importer a shipment detained for any of the reasons given in section 12.122 when the District Director has reasonable grounds to believe that the shipment may be brought into compliance, or when the District Director deems it appropriate under section 141.66 of this chapter. Any such release shall be conditioned upon furnishing a bond on Customs form 7551, 7553, or 7595 for the return of the shipment to Customs custody. The bond shall be for the full amount required in section 113.14 of this chapter. If a shipment of a chemical substance, mixture, or article is released to the importer under bond, the shipment shall be held intact and shall not be used or otherwise disposed of until the Administrator makes a final determination on entry as provided for in paragraph (c) of this section.

(c) *Determination by the Administrator.*—After consideration of the available evidence and within 30 days from the notice of detention, the Administrator shall notify the District Director of his decision to either permit or refuse entry of the shipment. If the Administrator finds that the shipment is in compliance with TSCA, the District Director shall release the shipment to the importer. If the Administrator finds that the shipment is not in compliance, the District Director shall:

(1) Refuse delivery to the importer, with reasons for such refusal, or

(2) If the shipment has been released on bond, demand its redelivery under the terms of the bond, giving reasons for such demand. If the merchandise is not redelivered within 30 days from the date of the redelivery notice, the District Director shall assess liquidated damages in the full amount of the bond.

12.124 Time Limitations and Extensions.

(a) *Time limitations.*—The importer of a shipment of chemical substances, mixtures, or articles which has been detained under

section 12.122 shall bring the shipment into compliance with TSCA or export the shipment from the customs territory of the United States within 90 days after notice of detention or 30 days of demand for redelivery, whichever comes first.

(b) *Time extensions.*—The District Director, upon notification by the Administrator, may grant an extension of not more than 30 days if, due to delays caused by the Environmental Protection Agency or the Customs Service:

(1) The importer is unable, for good cause shown, to bring a shipment into compliance with the act within the required time period; or

(2) The importer is unable to export the shipment from the customs territory of the United States within the required time period.

12.125 Notice of Exportation.

Whenever the Administrator directs the District Director to refuse entry under section 12.123 and the importer exports the noncomplying shipment within the 90-day period of notice of refusal of entry or within 30 days of demand for redelivery, the importer shall give written notice of the fact of exportation to the Administrator and the District Director.

The importer shall include the following information in the notice of exportation:

(a) The name and address of the exporter or his agent;

(b) A description of the chemical substances, mixtures, or articles exported;

(c) The destination (country);

(d) The port of arrival at the destination;

(e) The carrier;

(f) The date of exportation; and

(g) The bill of lading or the air waybill number.

12.126 Notice of Abandonment.

If the importer intends to abandon the shipment after receiving notice of refusal of entry, the importer shall present a written notice of intent to abandon to the District Director and the Administrator. Notification under this section is a waiver of any right to export the merchandise. The importer shall remain liable for any expenses incurred in the storage and/or disposal of abandoned merchandise.

12.127 Decision to Store or Dispose.

A shipment detained under section 12.122 shall be considered to be unclaimed or abandoned and shall be turned over to the Administrator for storage or disposition as provided for in section 127.28(i) of this chapter if the importer has not brought the shipment into compliance with TSCA within time limitations or extensions specified according to section 12.124 and:

(a) Has not exported the shipment within time limitations or extensions specified according to section 12.124; or

(b) Has certified intent to abandon the shipment in accordance with section 12.126.

333-194 O - 80 - 3

It is proposed to amend part 127, Customs Regulations (19 CFR part 127), by adding a new subsection (i) to section 127.28, to read as follows:

(i) *Chemical substances, mixtures, and articles containing chemical substances or mixtures.* Chemical substances, mixtures, and articles containing chemical substances or mixtures, as these items are defined in section 3, Toxic Substances Control Act (TSCA) and section 12.120 of this chapter, shall be inspected by a representative of the Environmental Protection Agency to ascertain whether they comply with TSCA and the regulations and orders issued thereunder. If found not to comply with these requirements, they shall be exported or otherwise disposed of immediately in accordance with the provisions of sections 12.125 through 12.127 of this chapter.

WILLIAM T. ARCHEY,
for Commissioner of Customs.

Approved: November 14, 1980.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register, Dec. 1, 1980 (45 F.R. 79730)]

United States Court of International Trade

(Slip Op. 80–2)

SANHO COLLECTIONS, LIMITED, PLAINTIFF, *v.* ROBERT E. CHASEN' COMMISSIONER OF CUSTOMS, ARTHUR GAREL, ACTING CHAIRMAN, COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS, AND THE UNITED STATES OF AMERICA, DEFENDANTS

Court No. 80–11–00039

Opinion and Order re Plaintiff's Application for Preliminary Injunction and Temporary Restraining Order

[Action dismissed in part; plaintiff's application for temporary restraining order and preliminary injunction denied.]

(Dated November 14, 1980)

Cleary, Gottlieb, Steen & Hamilton, Esqs. (*James W. Lamberton* and *Jonathan I. Blackman*, Esqs., of counsel) and *Siegel, Mandell & Davidson*, PC (*Steven S. Weiser*, Esq., of counsel) for the plaintiff.

Alice Daniel, Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*James A. Resti*, trial attorney), for the defendants.

NEWMAN, Judge: The recent enactment (effective Nov. 1, 1980) of the wide-ranging Customs Courts Act of 1980, granting substantially additional jurisdiction to the new U.S. Court of International Trade, inevitably will give rise to numerous areas of litigation. Indeed, this matter of first impression is typical.

This is an action for preliminary and permanent injunctive relief to restrain defendants from implementing a reduction in an import quota by the Committee for the Implementation of Textile Agreements (CITA) respecting certain sweaters from the Republic of Korea. On the merits, plaintiff challenges the legality of CITA's reduction in the sweater import quota.

Presently before this Court is plaintiff's application for an order to show cause why a temporary restraining order (TRO) and preliminary injunction pendente lite should not be issued under rule 65 of the rules of this court to restrain and enjoin defendants from prohibiting the entry into the United States of plaintiff's sweaters, pursuant to the contested quota reduction.

For the reasons indicated hereinafter, plaintiff's application is denied, and this action is dismissed in part.

I.

Accepting the averments of fact in the verified complaint as true, and the affidavits submitted on behalf of plaintiff in their most favorable light, as for the present purposes we must, the basic facts underlying this action may be summarized as follows:

> Under the terms of the Agricultural Act of 1956, 7 U.S.C. 1854, the President is authorized to negotiate agreements with foreign governments limiting the importation of textile products into the United States, and to issue regulations governing the entry of such products in order to carry out any agreements made. By Executive Order 11651 dated March 3, 1972, as amended by Executive Order 11951 dated January 6, 1977, the President's authority under 7 U.S.C. 1854 to implement textile trade agreements entered into pursuant to the statute has been delegated to CITA, which agency is further authorized to issue instructions to the Commissioner of Customs to take such actions respecting the entry of textile products into the United States as are necessary to carry out such agreements.

This action involves the Bilateral Cotton Wool and Man-made Fiber Textile Agreement, T.I.A.S. 9039 (Textile Agreement) between

the United States and the Republic of Korea. This agreement, executed on December 23, 1977, provides inter alia, for quotas or specific limits for various categories of textile products for each year during its term. Among the articles covered by the Textile Agreement are men's and women's sweaters made of cotton or manmade fibers (category 645/646).

Under the terms of the Textile Agreement, the sweaters in category 645/646 are subject to specific limits for each year of the agreement, which are set forth in annex B thereto. Additionally, the agreement provides for flexibility provisions which allow its specific limits to be exceeded in the course of any year in accordance with various criteria (Agreement, sec. 3). Thus, the agreement provides for increases in the specific limit for category 645/646 for any given year through carryovers of unfilled portions of previous years' quotas and carryforwards of portions of succeeding years' quotas (Agreement, sec. 9), and provides for additional percentage increases of 6 percent in any given year (Agreement, sec. 8). The Textile Agreement, however, does not expressly contain provisions for reduction of the specific limit for category 645/646, or any other category, during the course of a particular year.

Under the Textile Agreement, the specific limit for sweaters in category 645/646 for 1980 was set at 2,976,181 dozen, and thereafter increased by an amendment to the agreement, T.I.A.S. 9566 (Aug. 24, 1979), to 3,009,062 dozen, subject to the provisions for further increases that the agreement contains. On December 20, 1979, CITA issued a directive implementing this figure, and stating that the restraint level for the forthcoming year 1980 for sweaters in category 645/646 would be 3,009,062 dozen as the agreement provided. 44 FR 76573 (Dec. 27, 1980).

That directive contained a specific reference to the flexibility provisions of the Textile Agreement, stating:

> "The levels of restraint set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea which provide in part, that: (1) Within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carry forward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement."

Nothing in the December 20, 1979, directive referred to any possible reduction in the 1980 restraint levels.

Plaintiff made its import arrangements for 1980 in accordance with the December 20, 1979, directive. It was able to do so predicated on Korea's system of export control, under which Korea implements the specific limits enumerated in the Textile Agreement from its own end by allocating production among manufacturers, and only issuing visas for export up to the level set forth in the agreement. Relying upon the December 20, 1979, directive and this allocation mechanism, plaintiff entered into contracts during June and July 1980, to purchase a total of 233,340 sweaters in category 645/646 from Korean exporters, at an aggregate price of over $1 million, for importation into the United States. During July and August 1980, plaintiff proceeded to enter into agreements to resell these sweaters to American customers, for ultimate resale in the United States. By the end of September 1980, certain of these sweaters had been received by plaintiff, imported into the United States, and entered through Customs; but the majority were still in the process of being transported to the United States. All of them had been manufactured by the end of September 1980, or were in the process of manufacture. This was in accordance with the usual custom of the trade whereby garments to be sold for the Christmas season are in an advanced state of manufacture in September, are delivered to the U.S. importer by the end of October, and are redelivered by the importer to its customers by mid-November.

On September 23, 1980, CITA issued a directive in the form of a letter from the Acting Chairman of CITA to the Commissioner of Customs, 45 FR 63897 (Sept. 26, 1980). This directive was issued without any prior notice and without affording any opportunity for comment or hearing to any person. It purports to reduce retroactively the 1980 specific limit for sweaters in category 645/646 from 3,009,062 dozen, as set forth in CITA's December 20, 1979, directive and the Textile Agreement, to only 2,717,311 dozen, and directs the Commissioner of Customs to prohibit the entry of any sweaters in excess of this reduced amount. The CITA directive referred to the Government of Korea's consent to the reduction in the import restraint level.

As directed by CITA's September 23, 1980, promulgation, the Customs Service proceeded to implement the new reduced quota level. On November 7, 1980, officials of the Customs Service announced that as of 8:49 a.m. (e.s.t.) on November 4, 1980, the specific limit for category 645/646, as reduced to 2,717,311 dozen by CITA's September 23, 1980, directive, had been filled; and thereupon Customs excluded from entry into the United States any further sweaters then in the process of importation. At that time, plaintiff had 1,752 dozen sweaters in category 645/646 awaiting entry at J. F. K. International Airport in New York, and a further 7,551 dozen sweaters in this category awaiting shipment in Seoul, Korea. All of these sweaters have been paid for (or are subject to irrevocable letters of credit

permitting payment to be demanded at any time) and had already been sold to various customers in the United States. The Customs Service has indicated to plaintiff it will deny entry to any sweaters that plaintiff attempts to enter during 1980.

II.

In connection with plaintiff's application, which was filed on November 10, 1980, at 4:31 p.m., the eve of a national holiday, a conference was immediately held in Chambers on the same date from approximately 4:35 p.m. to 6:15 p.m., at which time counsel for the respective parties presented oral arguments in support of their positions. In view of plaintiff's emergent situation, the Court advised counsel that it would promptly issue an order and give this action precedence over all other pending matters. Based upon plaintiff's moving papers (defendant expressly declined at that time an opportunity to submit opposing papers), and the oral arguments, the contentions of the parties are as follows:

> Plaintiff contends: First, CITA's action is invalid because that agency failed to comply with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553) or otherwise provide notice and opportunity to comment before reducing the import restraint level. Second, CITA's action in suddenly ordering a sharp reduction in the import level about 3 months prior to ending of the year, after previously setting this level in accordance with the Textile Treaty and effectively representing that it was subject to upward modification only, was arbitrary and capricious. Finally, CITA's promulgated action exceeds its own legal authority, since it is not authorized by anything in the Textile Treaty that CITA is purporting to apply.

Plaintiff maintains that it should be granted extraordinary relief in the form of a TRO and preliminary injunction pendente lite since plaintiff is likely to succeed on the merits (or there are at least serious questions going to the merits), and without such relief plaintiff will suffer irreparable injury. Concerning the question of irreparable injury, plaintiff asserts that if these sweaters are denied entry until the opening of the import level for next year, they will lose most of their value; that such denial would render plaintiff unable to fulfill its contractual commitments; that plaintiff will be exposed to liability for damages from its American customers, as well as sustaining grave and irreparable injury to its good name and business reputation; and that none of these injuries will be compensable by money damages, since all stem directly from official action in lowering the quota for sweaters from Korea.

Defendants' position is that since plaintiff has failed to exhaust its administrative remedies, as required by 28 U.S.C. 2637, judicial review is premature at this juncture, and hence the court presently

lacks jurisdiction. Specifically, defendant insists that if plaintiff's sweaters have been, or are denied, entry under the restraint level, plaintiff must first seek an administrative review by filing a protest pursuant to 19 U.S.C. 1514, and plaintiff can request an accelerated disposition of the protest under 19 U.S.C. 1515(b). Counsel for defendants have expressed no views concerning the merits of the action, but dispute plaintiff's claim of irreparable injury.

For the reasons indicated hereinafter, this action is dismissed in part as premature, without prejudice to renewal, and plaintiff's application for a TRO and preliminary injunction is denied.

III.

Respecting the 1,752 dozen sweaters which were imported from Korea through the J. F. K. International Airport and were denied entry by Customs under the quota reduction, obviously there was a protestable action by Customs prescribed under 19 U.S.C. 1514(a)(4), and thus plaintiff has an administrative remedy. In accordance with 28 U.S.C. 2637, it is appropriate that this Court require the exhaustion of administrative remedies. Therefore, concerning the merchandise excluded from entry at the J. F. K. Airport, this action is presently not ripe for judicial review and must be dismissed in part, without prejudice to renewal after plaintiff has exhausted its administrative remedies.

However, as to the additional 7,551 dozen sweaters awaiting shipment in Seoul, Korea, there is presently no protestable administrative action pursuant to section 1514 and thus no administrative remedy. This Court unquestionably has subject matter jurisdiction under 28 U.S.C. 1581(i) (3) and (4) without administrative review. Consequently, plaintiff is properly in Court at this time regarding the sweaters awaiting shipment in Korea, which Customs has indicated will not be allowed entry during 1980.

We come, then, to a consideration of whether plaintiff has shown sufficient grounds warranting the exercise of the Court's powers to grant the extraordinary relief requested.

As provided by 28 U.S.C. 1585:

> The Court of International Trade shall possess all the powers in law or equity of, or as conferred by statute upon, a district court of the United States.

Moreover, it should be stressed that under 28 U.S.C. 2643 this Court, with certain limitations, is expressly empowered to grant injunctive relief.

The courts have long recognized that, fundamentally, preliminary injunctive relief is an extraordinary remedy, *Asher* v. *Laird*, 475 F. 2d 360, 362 (D.C. Cir. 1973) and should be granted only upon a clear showing that the moving party is entitled to the relief requested.

Flintkote Co. v. *Blumenthal*, 469 F. Supp. 115, 126–27 (N.D.N.Y. 1970), *aff'd.* 569 F. 2d 51 (2d Cir. 1979).

In *Asher* v. *Laird*, *supra*, 475 F. 2d at 362, the Court of Appeals succinctly observed:

> The granting of such extraordinary relief [a preliminary injunction] is a matter of the trial court's discretion as guided by a standard consisting of the following familiar factors: (1) Has the plaintiff made a strong showing that it is likely to prevail on the merits of the appeal?; (2) Has the plaintiff shown that without such relief it would be irreparably injured?; (3) Would the issuance of the injunction substantially harm other parties interested in the proceedings?; (4) Where lies the public interest?

See also the excellent discussion in *Re, Cases and Materials in Equity and Equitable Remedies* (1975), chapter XIX, section 1.

After full consideration of the factors enumerated above in *Asher* in conjunction with all the facts and circumstances adduced by plaintiff, I am constrained to conclude that plaintiff's application for the extraordinary relief sought should be denied.

Without prejudice to reaching a possibly contrary result when the merits of this action are fully considered, I find that plaintiff did not clearly demonstrate a substantial likelihood of success on the merits for purposes of an inquiry into the propriety of a preliminary injunction. Without such demonstration, plaintiff did not meet its burden and it would be inappropriate to grant a TRO or preliminary injunction which could possibly be interpreted as casting doubts upon the propriety of CITA's reduction in the import quota, so vigorously contested by plaintiff in this action. It must be emphasized that the granting of the TRO and preliminary injunction under the circumstances in this case would give plaintiff the ultimate or much of the relief which it hopes to attain by prevailing on the merits. Moreover, the valid public interest in a policy of quantitative import restrictions on textile products is entitled to great weight.

IV.

On November 13, 1980, at 5 p.m., an affidavit executed by James A. Resti, a trial attorney in the Department of Justice assigned to this case, was received by the Court. At that point in time, this opinion had been prepared and was in the final stages of typing. Nevertheless, the affidavit has been made part of the record and reviewed by the Court, but nothing contained therein alters the result reached in this opinion.

In substance, the affidavit reveals that the Government of Korea has asserted a claim that there exists a statistical discrepancy between the number of sweaters in category 645/646 exported from Korea, and the number of sweaters imported into the United States

numbering 55,448 dozen; that pending a determination of this discrepancy, CITA has decided to increase the specific limit in category 645/646 by 55,448 dozen; that as an interim measure CITA will lift the embargo currently in effect pending resolution of the discrepancy which may exist in the statistics; that notice of this increase will be published (subsequent to the promulgation of this opinion and order) in the Federal Register of Monday, November 17, 1980; and that Customs will lift the current embargo on November 18, 1980.

Defendant argues that the effect of CITA's decision is that, as of the effective date of raising the specific limit and the lifting of the embargo, there will exist no case or controversy due to the fact that the quota in question will be open; that only when the additional quota is filled will the threat of irreparable injury to plaintiff occur; and that it would be inappropriate to grant provisional relief in the form of a TRO or preliminary injunction within 4 days of the lifting of the embargo.

v.

The Court wishes to commend plaintiff's counsel, Messrs. Jonathan I. Blackman and Steven S. Weiser, for the superb job performed in this case, particularly in view of the emergent situation; and further, to commend all counsel for their excellent presentation in the extensive oral arguments, all in the best traditions of our profession.

For the foregoing reasons, it is hereby ordered:

1. This action is dismissed in part for lack of jurisdiction respecting 1,752 of plaintiff's sweaters imported from Korea, the entry of which merchandise into the United States was denied by the Customs Service. Such dismissal is without prejudice to renewal of the action after plaintiff has exhausted its administrative remedies pursuant to 28 U.S.C. 2637.

2. Plaintiff's application for a TRO and preliminary injunction is denied.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *November 17, 1980.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P80/176	Richardson, J. November 13, 1980	Capitol Wine & Liquor Co.	76-11-02502	Sec. 303, Tariff Act of 1930, countervailing duties	Dutiable without assessment of countervailing duties because no bounty or grant was paid or bestowed upon the manufacture, production, or export of the merchandise	Agreed statement of facts	Chicago Gin exported from Great Britain
P80/177	Watson, J. November 13, 1980	WFS Div. Amer. Rec. Grp., Ltd.	79-2-00319	Item 389.60 or 389.62 25¢ per lb. + 15%	Item 735.20 10%	The Newman Importing Co., Inc. v. U.S. (C.D. 4648)	Chicago Parts of nylon backpacking tents

P80/178	Re, C.J. November 14, 1980	Kombi Ltd.	77-7-01193	Item 705.35 15%	Item 734.97 Free of duty pursuant to GSP by virtue of Ex. Order 11888 of 11-24-75	Stonewall Trading Co. v. U.S. (C.D. 4023)	New York Ski gloves, ski mitts or ski mittens; product of eligible beneficiary country
P80/179	Richardson, J. November 14, 1980	Topcon Instrument Corp.	78-1-00135, etc.	Item 709.05 25%	Item 727.04 8.5%	Agreed statement of facts	New York Topcon adjustable instrument tables; movable articles of utility; chiefly used to equip doctors' offices and hospitals
P80/180	Watson, J. November 14, 1980	WFS Div. Amer. Rec. Grp., Ltd.	79-7-01147	Item 389.62 25¢ per lb. + 15%	Item 735.20 10%	The Newman Importing Co., Inc. v. U.S. (C.D. 4648)	Chicago Nylon backpacking tents
P80/181	Watson, J. November 14, 1980	World Famous Sales Co.	78-7-01340	Item 389.60 or 389.62 25¢ per lb. + 15%	Item 735.20 10%	The Newman Importing Co., Inc., v. U.S. (C.D. 4648)	Chicago Nylon backpacking tents

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/341	Watson, J. November 13, 1980	Mitsui & Co., Ltd.	R69/4858	United States value	Equal to Mitsui Seiki f.o.b. Japan unit value ($11,162.39) multiplied by the factor of 1.729, less 20% commission, less 4.66% of Mitsui Seiki f.o.b. unit value, less included duty, packed	Judgment on the pleadings	Chicago Jig boring machine
R80/342	Richardson, J. November 14, 1980	Precision Knitting Accessories	80-7-01072	Export value	Invoice unit values	Agreed statement of facts	New York Latch needles
R80/343	Richardson, J. November 14, 1980	Trans-Ocean Import Co., Inc.	R60/22646	Export value	F.o.b. unit invoice prices plus 20% of difference berween f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Charleston Wool tube mats

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY,
November 26, 1980.

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of CHLOROFLUOROHYDROCARBON DRY-CLEANING PROCESS, MACHINES AND COMPONENTS THEREFOR	Investigation No. 337–TA–84

Notice of More Complicated Designation

AGENCY: U.S. International Trade Commission.

ACTION: Designation of this investigation as more complicated within the meaning of 19 U.S.C. 1337(b)(1) and 19 CFR 210.15.

AUTHORITY: The authority for Commission designation is contained in section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)) and in rule 210.15 of the Commission's Rules of Practice and Procedure (19 CFR 210.22).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Upon receipt of a complaint filed by Research Development Co., of Minneapolis, Minn., the U.S. International Trade Commission instituted an investigation on April 17, 1980, to determine whether there is a violation of section 337(a) of the Tariff Act of 1930 (19 U.S.C. 1337(a)) in the importation into the United States of chloroflourohydrocarbon drycleaning machines, or in their sale, by reason of the alleged infringement of claims 1, 3, and 4 of U.S. Letters Patent

3,728,074, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Notice of the Commission's investigation was published in the Federal Register of June 11, 1980 (45 F.R. 39580).

On October 8, 1980, the complainant filed a motion (motion 84–9) to designate the investigation "more complicated," within the meaning of section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)) and rule 210.15 of the Commission's Rules of Practice and Procedure. The motion was supported in a response from the Commission investigative attorney, filed October 17, 1980. The motion was opposed in a response from Macchine Suprema, filed October 21, 1980. On October 24, 1980, the presiding officer certified to the Commission the recommendation that Investigation No. 337–TA–84 be designated more complicated.

DISCUSSION

In determining whether an investigation is more complicated, the Commission must find that it "is of an involved nature owing to the subject matter, difficulty in obtaining information, or large number of parties involved." 19 CFR 210.15. In the present case, two parties were recently joined as respondents and joinder of a third (E. I. du Pont de Nemours & Co., Inc.) is proposed. Du Pont has admitted that it has caused to be imported machinery which allegedly infringes the subject patent. Since these allegations must be investigated and further discovery must take place, there is clearly a present difficulty in obtaining information.

In addition, the recent joinder ot the two respondents and the proposed joinder of du Pont increases the number of parties to the investigation. Since the record indicates that the interests of the various parties are not coincident, the respondents cannot be expected to consolidate their actions. Under these circumstances, the Commission believes that there is now a large number of parties in this investigation.

For these reasons, the Commission concludes that this investigation must be designated more complicated. The practical effect of this determination is that the deadline for making a final determination in this investigation will be extended from June 11, 1981, to December 11, 1981.

Copies of the Commission's action and order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission; telephone 202–523–0493.

By order of the Commission.

Issued: November 17, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of CHLOROFLUOROHYDROCARBON DRY-CLEANING PROCESS, MACHINES AND COMPONENTS THEREFOR	Investigation No. 337–TA–84

Notice of Addition of a Party Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Addition of party respondent: E.I. du Pont de Nemours & Co., Inc., 1007 Market Street, Wilmington, Del. 19898.

AUTHORITY: The authority for Commission disposition of the subject motion is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in 19 CFR 210.22.

SUPPLEMENTARY INFORMATION: Upon receipt of a complaint filed by Research Development Co., of Minneapolis, Minn., the U.S. International Trade Commission instituted an investigation on April 17, 1980, to determine whether there is a violation of section 337(a) of the Tariff Act of 1930 (19 U.S.C. 1337(a)) in the importation into the United States of chlorofluorohydrocarbon drycleaning machines, or in their sale, by reason of the alleged infringement of claims 1, 3, and 4 of U.S. Letters Patent 3,728,074, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated in the United States. Notice of the Commission's investigation was published in the Federal Register of June 11, 1980 (45 F.R. 39580).

On September 26, 1980, E.I. du Pont de Nemours & Co., Inc. (hereinafter du Pont), filed a motion to intervene (motion 84–8), pursuant to rule 210.6 of the Commission's Rules of Practice and Procedure, as a nonparty intervenor.

On October 14, 1980, the Commission investigative attorney's response to motion 84–8 was redesignated motion 84–12 to amend the complaint and notice of investigation by addition of E. I. du Pont de Nemours & Co., Inc. as a party respondent. On October 27, 1980, the motion was certified to the Commission by the presiding officer, who recommended that the motion be granted. Copies of the Commission's action and order and all other nonconfidential documents

filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission: telephone 202–523–0493.

By order of the Commission.

Issued: November 17, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN AIRLESS PAINT SPRAY PUMPS AND COMPONENTS THEREOF

Investigation No. 337–TA–90

Notice of Investigation

Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 8, 1980, and amended October 22, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Wagner Spray Tech Corp., 1770 Fernbrook Lane, Minneapolis, Minn. 55440. The amended complaint (hereinafter referred to as the complaint) alleges unfair methods of competition and unfair acts in the importation into the United States of certain airless paint spray pumps and components thereof, or in their sale, because such pumps are allegedly covered by claims 1, 22, and 23 of U.S. Letters Patent 3,254,845, claims 12 and 19 of U.S. Letters Patent 3,367,270, and claims 40, 41, and 42 of U.S. Letters Patent Re 29,055. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation; conduct an expedited hearing for the purpose of determining whether there is reason to believe that there is a violation of section 337; upon the conclusion of said expedited hearing, issue both a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, during the investigation and a temporary cease and desist order with respect to domestic sales and promotion of stockpiled imports; and, after a

full investigation, issue an order permanently forbidding entry of the articles in question into the United States.

Having considered the complaint, the Commission, on November 6, 1980, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), an investigation be instituted to determine whether there is reason to believe that there is a violation and whether there is a violation of subsection (a) of section 337 in the unauthorized importation of certain airless paint spray pumps, components thereof, and airless paint spray equipment containing said pumps into the United States, or in their sale, by reason of the alleged coverage of such pumps by claims 1, 22, and 23 of U.S. Letters Patent 3,254,845 claims 12 and 19 of U.S. Letters Patent 3,367,270, and claims 40, 41, and 42 of U.S. Letters Patent Re 29,055, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Wagner Spray Tech Corp.
1770 Fernbrook Lane
Minneapolis, Minn. 55440

(b) The respondents are the following companies alleged to be engaged in the unauthorized importation of such articles into the United States, or in their sale, and are parties upon which the complaint is to be served:

Larius DiCastagna and C., S.N.C., Ltd.
Via Perviotti 11
Lecco, Italy

Imperial Paint Applicators, Ltd.
4 Station Road
Irvington, N.Y. 10533

Karmichael Industries, Ltd.
4 Station Road
Irvington, N.Y. 10533

Simco Bush Tool Corp.
4 Station Road
Irvington, N.Y. 10533

c. Talbot S. Lindstrom, Chief, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall name the Commission investigative attorney, a party to this investigation;

3. For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer; and

4. With respect to the complainant's request for expedition of the temporary relief hearing, action on such request is deferred to the presiding officer.

The phrase "and airless paint spray equipment containing said pumps" has been added to paragraph (1) above on the basis of informal investigatory activities by the Commission which revealed that the pumps of the type alleged to infringe the aforesaid claims of said respective letters patents can be imported as airless paint spray pumps, components thereof, and as a part of airless paint spray equipment.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

By order of the Commission.

Issued: November 17, 1980.

KENNETH R. MASON,
Secretary.

731–TA–36 (Preliminary)

Snow Grooming Vehicles, Parts Thereof and Accessories Therefor From the Federal Republic of Germany

Notice of Institution of Preliminary Antidumping Investigation and Scheduling of Conference

AGENCY: U.S. International Trade Commission.

ACTION: Institution of preliminary antidumping investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports from the Federal Republic of Germany of certain snow grooming vehicles, parts thereof and accessories therefor allegedly sold or likely to be sold at less than fair value. For the purposes of this investigation, the term "snow grooming vehicles, parts thereof and accessories therefor" means track-laying vehicles, having a tilting cab, specially designed for grooming snow, provided for in items 692.16 or 692.35 of the Tariff Schedules of the United States (TSUS) and parts thereof and accessories therefor chiefly used on such vehicles, wherever provided for in the TSUS.

EFFECTIVE DATE: November 6, 1980.

FOR FURTHER INFORMATION CONTACT: John MacHatton, Supervisory Investigator; 202–523–0439.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This investigation is being instituted following receipt of a petition on November 6, 1980, filed by the Logan Division of DeLorean Manufacturing Co. The petition requested the imposition of additional duties in an amount equal to the amount by which the foreign market value exceeds the U.S. price of snow grooming vehicles imported from the Federal Republic of Germany.

AUTHORITY

Section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States is materia ly injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports alleged to be, or likely to be, sold in the United States at less than fair value. Such a determination must be

made within 45 days after the date on which a petition is filed under section 732(b) or on which notice is received from the Department of Commerce of an investigation commenced under section 732(a). Accordingly, the Commission, on November 17, 1980, instituted preliminary antidumping investigation No. 731–TA–36. This investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207, 44 F.R. 76457) and particularly, subpart B thereof.

WRITTEN SUBMISSIONS

Any person may submit a written statement of information pertinent to the subject matter of this investigation to the Commission on or before December 5, 1980. A signed original and 19 copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data". Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

CONFERENCE

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10 a.m., e.s.t., on December 4, 1980, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, Mr. John MacHatton (202–523–0439). It is anticipated that parties in support of the petition for antidumping duties and parties opposed to such petition will each be collectively allocated 1 hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by the supervisory investigator.

INSPECTION OF PETITION

The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

By order of the Commission.

Issued: November 17, 1980.

KENNETH R. MASON,
Secretary.

(332–119)

BACKGROUND STUDY OF THE ECONOMIES AND INTERNATIONAL TRADE PATTERNS OF THE COUNTRIES OF NORTH AMERICA (INCLUDING CENTRAL AMERICA AND THE CARIBBEAN)

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the U.S. International Trade Commission, following receipt on October 10, 1980, of a request from the U.S. Trade Representative at the direction of the President, has instituted an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) with respect to the economies and international trade patterns of the countries of North America (including Central America and the Caribbean).

EFFECTIVE DATE: November 13, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Martin F. Smith, Trade Reports Division, Office of Economics, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; 202–724–0092.

SUPPLEMENTARY INFORMATION: Section 1104 of the Trade Agreements Act of 1979 (Public Law 96–39) directs the President to study the desirability of entering into trade agreements with countries in the northern portion of the Western Hemisphere to promote the economic growth of the United States and such countries and the mutual expansion of market opportunities and to report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate his findings and conclusions. The President's study will include, inter alia, chapters on the economic structures and international trade patterns of North American countries. The Commission investigation will provide materials for these chapters.

WRITTEN SUBMISSIONS: The Commission has no public hearings scheduled for this investigation. Written submissions from interested parties are therefore invited concerning any phase of the Commission's study on the economic structures and international trade patterns of North American countries. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked Confidential Business Information at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be insured of consideration by the Com-

mission in this study, written statements should be submitted at the earliest practicable date, but no later than December 10, 1980. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

COMPLETION DATE: The Commission plans to complete its study and submit its report to the U.S. Trade Representative not later than January 31, 1981.

By order of the Commission.

Issued: November 19, 1980.

KENNETH R. MASON,
Secretary.

Notice of Change in Scope of Investigation No. 731–TA–7 (Final) Certain Electric Motors From Japan

AGENCY: U.S. International Trade Commission.

ACTION: Change in scope of final antidumping investigation.

EFFECTIVE DATE: November 19, 1980.

FOR FURTHER INFORMATION CONTACT: Bruce Cates, Senior Investigator, Office of Investigations; telephone 202–523–0368.

SUPPLEMENTAL INFORMATION: On June 20, 1980, the Department of Commerce published with respect to AC, polyphase electric motors from Japan a notice of preliminary determination of sales at less than fair value. This notice advised the public that, with the exception of submersible well-pump motors which had been excluded from the investigation, there was reason to believe that certain industrial electric motors, of greater than 5 but not greater than 500 horsepower, from Japan are being, or are likely to be, sold in the United States at less than fair value.

On October 29, 1980, the Department of Commerce determined, pursuant to section 735(a) of the Tariff Act of 1930 (19 U.S.C. 1673d), that AC, polyphase electric motors of not less than 150 horsepower and not greater than 500 horsepower from Japan are being sold in the United States at less than fair value.

As to AC, polyphase electric motors of greater than 5 horsepower and less than 150 horsepower, on October 29, 1980, pursuant to section 734 of the Tariff Act of 1930 (19 U.S.C. 1673c), the Department of Commerce accepted an agreement from Toshiba and TIC (the principal importer) to limit the exportation of such motors to the United States. Under the agreement, Toshiba and TIC agree to cease, within 6 months, exports of AC, polyphase electric motors of greater than 5 hp and less than 150 hp, except for oil-well-pump and

explosion-proof motors, and to revise prices to completely eliminate any sales at less than fair value of imported oil-well-pump and explosion-proof motors greater than 5 and less than 150 horsepower.

As a result of the agreement, the Department of Commerce, pursuant to section 734(f)(1) of the Tariff Act of 1930 (19 U.S.C. 1673c), suspended its investigation with respect to AC, polyphase electric motors of greater than 5 horsepower and less than 150 horsepower. Under section 734(f)(2)(A) of the act, the liquidation of entries of small motors, effective June 20, 1980 (45 F.R. 41687), is terminated. Any cash deposits, bonds, or other security deposited on entries of small motors pursuant to suspension of liquidation will be refunded. As to the large motors, those of not less than 150 horsepower and not greater than 500 horsepower, the suspension of liquidation shall continue until further notice.

Pursuant to the requirements of section 734(f)(1)(B) of the Tariff Act of 1930, (19 U.S.C. 1673c) the Commission is also suspending that portion of its investigation on certain electric motors from Japan inv. No. 731–TA–7 (Final), that pertains to AC, polyphase electric motors of greater than 5 horsepower but less than 150 horsepower.

By order of the Commission.

Issued: November 20, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN ROTATABLE PHOTOGRAPH AND CARD DISPLAY UNITS, AND COMPONENTS THEREFOR } Investigation No. 337–TA–74

Notice of Commission Determination and Order

Notice is hereby given that, upon consideration of the presiding officer's recommended determination and the record in this proceeding (investigation No. 337–TA–74, Certain Rotatable Photograph and Card Display Units, and Components Therefor), the Commission has unanimously determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain rotatable photograph and card display units which infringe (1) the claim of U.S. Letters Patent 3,218,743, (2) the claim of U.S. Letters Patent 3,791,059, (3) U.S. Trademark Registration No. 838,394, and (4) the common-law trademark "Roto-Photo" and has ordered that infringing devices be excluded from entry into the United States during the lives of said patents or registered trademark or during the use of the common law trademark, except under license.

The Commission also ordered that these devices are entitled to entry into the United States under bond in the amount of 200 percent ad valorem during the period that this action is pending before the President.

Notice is also given that the Commission has granted motions Nos. 74–8 and 74–9 to terminate this investigation as to respondents American Consumer, Inc., and Dan-Dee Imports, Inc., on the basis of settlement agreements between complainants and those respondents.

This Commission order is effective on the date of its publication in the Federal Register. Any party wishing to petition for reconsideration must do so within fourteen (14) days of service of the Commission determination. Such petitions must be in accord with section 210.56 of the Commission's rules (19 CFR 210.56). Any person adversely affected by a final Commission determination may appeal such determination to the U.S. Court of Customs and Patent Appeals.

Copies of the Commission's Determination, Order, and Memorandum Opinion (USITC Publication 1109, Nov. 1980) are available to the public during official working hours at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161. Notice of the institution of the Commission's investigation was published in the Federal Register of November 21, 1979 (44 F.R. 66997).

By order of the Commission.

Issued: November 21, 1980.

KENNETH R. MASON,
Secretary.

Index

U.S. Customs Service

U.S. Court of International Trade

U.S. GOVERNMENT PRINTING OFFICE : 1980 - O - 333-194